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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,665	06/25/2001	Andrew Jay Diamond		8869

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ANDREW DIAMOND  
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EXAMINER

YOUNG, JOHN L

ART UNIT PAPER NUMBER

3622

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/888,665

Applicant(s)

DIAMOND, ANDREW JAY

Examiner

John L Young

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WU

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

JOHN LEONARD YOUNG, ESQ.  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/31/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **FIRST ACTION REJECTION**

**(Paper# 10/31/2004)**

### **DRAWINGS**

1. This application has been filed with drawings that are considered informal; said drawings are acceptable for examination purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

### **CLAIM OBJECTIONS—608.01(m) Form of Claims**

2. Claims 1-6 of the instant application are objected to because they contain more than one period in the body of each claim.

3. Claim 7 is objected to because of a typographical error at line 2 after the word “regardless” insert the word –of--.

### **CLAIM REJECTIONS — 35 U.S.C. §103( a )**

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. §103( a ) as being obvious over Ogasawara US 6,513,015 (01/28/2003) [US f/d: 09/25/1998] (herein referred to as "Ogasawara").

As per independent claim 1, Ogasawara (the ABSTRACT; FIG. 2; FIG. 4; FIG. 4; FIG. 6; ; col. 1, ll. 7-15; col. 2, ll. 1-20; col. 1, ll. 56-67; col. 3, ll. 1-67; col. 4, ll. 1-67; col. 5, ll. 1-40; col. 5, ll. 47-53; col. 6, ll. 35-67; col. 7, ll. 1-67; col. 8, ll. 1-67; col. 11, ll. 15-67; col. 13, ll. 35-67; col. 15, ll. 30-67; col. 16, ll. 1-67; col. 17, ll. 1-60; and whole document) implicitly shows: "Detecting the cellular phone or other electronic device which is capable of unique identification wirelessly . . . Storing the unique identification number and location . . . Storing the device'[sic] entry time . . . Storing the device's exit time . . . Checking the device's prior visitations . . . Deciding upon a reward based upon visitations . . . Delivery of the award."

Ogasawara lacks explicit recital of the preamble of claim 1 (i.e., a "method of anonymously noting and rewarding the presence of individuals in a retail environment. . .

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.”); however, the anonymity element in the preamble of claim 1 is not given patentable weight because said element in the preamble is not mentioned in the body of the claim and therefore does not breath life into the body of the claim concerning that element; furthermore,

Ogasawara (col. 2, ll. 27-32) discloses: *“Any customer loyalty or incentive system established by the retailer is only able to recognize a particular customer ID card at the checkout counter and could only contain information about items already considered for purchase.”*

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Ogasawara (col. 2, ll. 27-32) implicitly shows the anonymity element in the preamble of claim 1, and it would have been obvious to modify and interpret the disclosure of Ogasawara (col. 2, ll. 27-32) cited above as implicitly showing, the anonymity element in the preamble of claim 1, because modification and interpretation of the cited disclosure of Ogasawara would have provided means to *“An updated transaction record, including any loyalty or incentive point award . . . [applicable] to a customer’s purchases. . . .”* (see Ogasawara (col. 2, ll. 15-20)), based on the motivation to modify Ogasawara so the customer transaction can “contain information about items already considered for purchase. . . .” (see Ogasawara (col. 2, ll. 30-32)).

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As per independent claim 2, Ogasawara (the ABSTRACT; FIG. 2; FIG. 4; FIG. 4; FIG. 6; ; col. 1, ll. 7-15; col. 2, ll. 1-20; col. 1, ll. 56-67; col. 3, ll. 1-67; col. 4, ll. 1-67; col. 5, ll. 1-40; col. 5, ll. 47-53; col. 6, ll. 35-67; col. 7, ll. 1-67; col. 8, ll. 1-67; col. 11, ll. 15-67; col. 13, ll. 35-67; col. 15, ll. 30-67; col. 16, ll. 1-67; col. 17, ll. 1-60; and whole document) implicitly shows: “Detecting the cellular phone or other electronic device which is capable of unique identification wirelessly . . . Storing the unique identification number and location . . . Storing the device’s entry time . . . Accepting notification of a specific interest by the individual . . . Storing the device’s exit time . . . Detecting a future visitation of the device . . . Deciding upon a reward geared towards the specific interest . . . Delivery of the award.”

Ogasawara lacks explicit recital of the preamble of claim 1 (i.e., a “method of anonymously noting and rewarding the presence of individuals in a retail environment. . . .”); however, the anonymity element in the preamble of claim 1 is not given patentable weight because said element in the preamble is not mentioned in the body of the claim and therefore does not breath life into the body of the claim concerning that element; furthermore,

Ogasawara (col. 2, ll. 27-32) discloses: *“Any customer loyalty or incentive system established by the retailer is only able to recognize a particular customer ID card at the checkout counter and could only contain information about items already considered for purchase.”*

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It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Ogasawara (col. 2, ll. 27-32) implicitly shows the anonymity element in the preamble of claim 1, and it would have been obvious to modify and interpret the disclosure of Ogasawara (col. 2, ll. 27-32) cited above as implicitly showing, the anonymity element in the preamble of claim 1, because modification and interpretation of the cited disclosure of Ogasawara would have provided means to “*An updated transaction record, including any loyalty or incentive point award . . . [applicable] to a customer’s purchases. . . .*” (see Ogasawara (col. 2, ll. 15-20)), based on the motivation to modify Ogasawara so the customer transaction can “contain information about items already considered for purchase. . . .” (see Ogasawara (col. 2, ll. 30-32)).

Independent claim 3 is rejected for the same reasons as independent claim 1.

Independent claim 4 is rejected for the same reasons as independent claim 2.

Independent claim 5 is rejected for substantially the same reasons as independent claim 1.

Independent claim 6 is rejected for substantially the same reasons as independent claim 2.

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Dependent claim 7 is rejected for at least the same reasons as the rejection for the “Deciding upon a reward based upon visitations. . . .” element and limitation found at line 9 of claim 1.

As per dependent claim 8, Ogasawara shows the method for claim 2.

Ogasawara (the ABSTRACT; FIG. 2; FIG. 4; FIG. 4; FIG. 6; ; col. 1, ll. 7-15; col. 2, ll. 1-20; col. 1, ll. 56-67; col. 3, ll. 1-67; col. 4, ll. 1-67; col. 5, ll. 1-40; col. 5, ll. 47-53; col. 6, ll. 35-67; col. 7, ll. 1-67; col. 8, ll. 1-67; col. 11, ll. 15-67; col. 13, ll. 35-67; col. 15, ll. 30-67; col. 16, ll. 1-67; col. 17, ll. 1-60; and whole document) implicitly shows: “wherein the reward is delivered based upon prior visitation regardless of prior purchase. . . .”

Ogasawara lacks verbatim recital of “wherein the reward is delivered based upon prior visitation regardless of prior purchase. . . .”; however,

Ogasawara (col. 2, ll. 27-32) discloses: *“Any customer loyalty or incentive system established by the retailer is only able to recognize a particular customer ID card at the checkout counter and could only contain information about items already considered for purchase.”*

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Ogasawara (col. 2, ll. 27-32) implicitly shows “wherein the reward is delivered based upon prior visitation regardless of prior purchase. . . .”,



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and it would have been obvious to modify and interpret the disclosure of Ogasawara (col. 2, ll. 27-32) cited above as implicitly showing, “wherein the reward is delivered based upon prior visitation regardless of prior purchase. . . .”, because modification and interpretation of the cited disclosure of Ogasawara would have provided means to “*An updated transaction record, including any loyalty or incentive point award . . . [applicable] to a customer’s purchases. . . .*” (see Ogasawara (col. 2, ll. 15-20)), based on the motivation to modify Ogasawara so the customer transaction can “contain information about items already considered for purchase. . . .” (see Ogasawara (col. 2, ll. 30-32)).

## CONCLUSION

5. Any response to this action should be mailed to:

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Any response to this action may be sent via facsimile to either:

(703)305-7687 (for formal communications EXPEDITED PROCEDURE) or

(703) 305-7687 (for formal communications marked AFTER-FINAL) or

(703) 746-7240 (for informal communications marked PROPOSED or DRAFT).

Hand delivered responses may be brought to:

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Crystal Park V  
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Serial Number: 09/888,665

(Diamond)

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Arlington, Virginia.

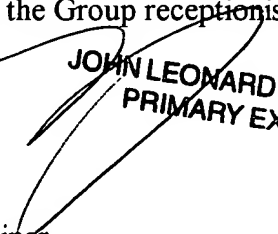
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday between 8:30 A.M. and 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

  
John L. Young

Primary Patent Examiner

  
JOHN LEONARD YOUNG, ESQ.  
PRIMARY EXAMINER

October 31, 2004